JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 920

BLOOMFIELD STEAMSHIP COMPANY,
Petitioner,

v.

CHARLES S. HAIGHT, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

We respectfully submit that under the criteria established by Rule 19 none of the three questions presented warrants review by this Honorable Court. In ruling upon the First Question, that an injunction has no extra-territorial effect in a limitation of liability proceeding, the Courts below were following long-settled principles established by this Court and the Court of Appeals for the Second Circuit; the Second Question, affirming the District Court's power to dismiss a limitation petition which did not comply with former Admiralty Rule 54, is of no current interest in view of the July 1, 1966 amendment of the Federal Rules of Civil Procedure to embrace Admiralty actions; and the Third Question, whether two courts are obliged to apply a rule of law in the same manner when the facts are found to be different, certainly does not warrant the attention of this Court.

1. In holding that an injunction issued pursuant to the United States Limitation of Liability Act does not have extra-territorial effect, the Courts below followed well-established precedent.

(a) *Prior interpretations of the Limitation Act reject extra-territorial effect.*

Relying upon and construing this Court's decisions in *The Titanic,* 233 U. S. 718, 34 S. Ct. 754 (1914), and *British Transport Commission* v. *United States (Duke of York-Haiti Victory),* 354 U. S. 129, 77 S. Ct. 1103 (1957), the Courts below correctly held that an injunction in a limitation proceeding has only domestic, not international effect (Appendix D to Petition, pages 32-33). In *Titanic* this Court recognized that a United States court's limitation injunction does not require all potential claimants to file claims in that court:

> "* * * It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler* v. *Boston & Savannah Steamship Co.,* 130 U. S. 527. The question is not whether the owner of the Titanic by this proceeding can require all claimants to come in and can cut down rights vested under English law, as against, for instance, Englishmen living in England who do not appear. It is only whether those who do see fit to sue in this country are limited in their recovery irrespective of the English law. * * *" (233 U. S. at pp. 732-733)

In *British Transport,* which Petitioner suggests (p. 11) is "practically the converse" of the present case, a claim had been filed by the other shipowner, but this Court expressly pointed out that a limitation injunction would not be ef-

fective to compel foreign claimants to claim in a United States limitation proceeding:

> "* * * While it is true that no compulsion could be exerted on foreign claimants to file claims and some would not do so thus preventing the determination of fault from being *res judicata* as to them; and while an injunction against suits being filed in foreign jurisdictions would be ineffective unless comity required its recognition; and assuming all this would encourage the filing of foreign suits and the levying of attachments on any offending American vessel while in a foreign port, or for that matter against any vessel of the same American owner; still this would have little practical effect on the operation of our limitation law. Most foreign claimants are foreign shipowners whose vessels visit American ports and are subject to like action by claimants living here. * * *" (345 U. S. at p. 142)

The Court of Appeals for the Second Circuit reached the same conclusion as to the purely domestic effect of a United States limitation proceeding in the Titanic litigation, and the Courts below relied upon and followed that interpretation, as stated in the Opinion of the District Court (Appendix D to Petition, p. 33):

> "In the related case of *The Titanic,* 2 Cir., 1915, 225 F. 747, foreign claimants who had filed in the American limitation proceeding were permitted to withdraw their claims though it appeared that the purpose of the withdrawal was to proceed in the English courts where a better recovery could be had. The court held that the district court could not retain jurisdiction for the reason that if it released the claimants they might get relief in some other tribunal. It said (p. 748):

> 'When they have withdrawn they are as free from it for all purposes as if they never had been parties.'
>
> That being true, a potential claimant who has not filed his claim in the United States limitation proceeding has the right to pursue his claim in a foreign court if he so chooses and can obtain jurisdiction.***"

The question presented in this case is not, as Petitioner would have it, whether a District Court has power to require parties to litigation before it to take or refrain from action outside its jurisdiction, but whether Congress gave the District Courts power to enjoin potential claimants, who had not filed claims, from suing a limitation petitioner in the courts of another country. The *Titanic* and *British Transport* decisions of this Court answer in the negative. Principles of statutory construction also compel a negative answer.

(b) *Principles of statutory construction reject extra-territorial effect.*

As shown by Petitioner's quotation (p. 15) from *Steele* v. *Bulova Watch Co.*, 344 U. S. 280, 73 S. Ct. 252 (1952), even where Congress has the power to enact laws having extra-territorial effect upon American citizens, whether in a given case Congress has done so "depends on construction of exercised congressional power, not the limitations upon that power itself" (344 U. S. at pp. 282-283), and in determing that issue, the Court said:

> "* * *This Court has often stated that the legislation of Congress will not extend beyond the boundaries of the United States unless a contrary legislative intent appears. * * *" (344 U. S. at p. 285)

This canon of statutory construction was summarized in *American Banana Co.* v. *United States Fruit Co.*, 213 U. S. 347, 357, 29 S. Ct. 511 (1909):

> "The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain, In re Sawers,* 12 Ch. Div. 522, 528; *State* v. *Carter,* 27 N. J. (3 Dutcher) 499; *People* v. *Merrill,* 2 Parker, Crim. Rep. 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch. * * *"

(c) *Construction of the wording of the Act rejects extra-territorial effect.*

Section 185 of the Limitation of Liability Act provides that upon the filing of a petition as therein prescribed, "all claims and proceedings against the owner with respect to the matter in question shall cease." The foregoing language has been construed by this Court to constitute a "statutory injunction" directed to and binding upon the courts themselves. This of necessity can only refer to courts subject to Congress' authority.

Thus in *Providence & N. Y. SS. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 3 S. Ct. 379 (1883), this Court held that a final decree in a New York limitation of liability proceeding was a bar to an action in a Massachusetts state court on the ground that the Limitation of Liability Act "is binding on all courts and jurisdictions throughout the United

States" (109 U. S., at 590), the injunction contained in the Act applying "as well to 'claims and proceedings' in State courts as to those in the federal courts" (id. at 600). The Court held that when a limitation proceeding was commenced under the act, "it became the duty of all courts before which any of such claims were prosecuted . . . to suspend further action upon said claims. * * * It was the duty of the court . . . to have obeyed the injunction of the Act of Congress, which declared that 'all claims and proceedings shall cease.'" (id. at 599, 601).

This view of the Limitation Act was reiterated in *The San Pedro*, 223 U. S. 365, 32 S. Ct. 275 (1912), again holding the statutory injunction binding upon courts subject to the laws of the United States:

> "* * * In that situation, the jurisdiction of the court to hear and determine every claim in that proceeding became exclusive. It was then the duty of every other court, Federal or state, to stop all further proceedings in separate suits upon claims to which the limited liability act applied.
>
> Nor is the issuance of an injunction necessary to stop proceedings in separate or independent suits upon such claims. Power to grant an injunction exists under § 4285, Revised Statutes, when necessary to maintain the exclusiveness of the jurisdiction; but when the procedure provided by rule 54 has been followed and a monition has issued 'against all persons claiming damages . . . citing them to appear before said court and make proof of their respective claims,' etc., it is the duty of every other court, when the pendency of such a liability petition is pleaded, to stop. The very nature of the proceeding and the monition has the effect of a statutory injunction. Indeed, that is the express declaration of the statute." (223 U. S. at p. 372)

We submit that the purely domestic effect of the Limitation Act necessarily follows from this Court's construction of the Act's "statutory injunction" upon the courts, for it can only concern the state and federal courts subject to the authority of Congress.

2. Interpretation of Former Admiralty Rule 54

Rule 54 (quoted at p. 7 of Petition) directed that in cases where suit has been commenced against a shipowner, a petition for limitation of liability "shall" be filed in a district in which the owner has been sued. Petitioner Bloomfield ignored that requirement, and the District Court dismissed the petition "for failure to comply with Rule 54" (Opinion, Appendix D to Petition, p. 39).

Rule F(9) of the Supplemental Rules for admiralty claims under the Federal Rules of Civil Procedure (quoted at pp. 5-6 of Petition) has now been substituted for Admiralty Rule 54, and Rule F(9) specifically provides that if "venue is wrongly laid, the Court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought." Thus, the present wording of the Rule makes clear the power of a District Court to dismiss a petition which has been filed in the wrong district.

We submit that it is an imposition upon the time of this Court to ask that it deal further with the question of interpretation of former Admiralty Rule 54, particularly in view of the fact that following the March 13, 1964 dismissal by the District Court below of Bloomfield's limitation proceeding herein, Bloomfield on March 30, 1964 filed a timely limitation proceeding in the United States District Court for the Southern District of New York, as noted in the decision below of the Court of Appeals for the Fifth Circuit (Appendix A to Petition, p. 26).

3. No issue appropriate for review by this Court is raised by the fact that the District Court below, after taking evidence, determined that Petitioner Bloomfield was doing business within the jurisdiction of the United States District Court for the Southern District of New York as of October 10, 1963, the Court below declining to follow an October 1, 1963 decision by the Supreme Court of the State of New York, based upon unspecified conceded facts, that at some unspecified earlier date Petitioner Bloomfield was not doing sufficient business in New York to confer jurisdiction over it by that Court in a wholly unrelated action involving different parties.

We submit that to state the foregoing proposition sufficiently demonstrates that it is not an issue worthy of consideration by this Court. The portion of the Opinion of the District Court below, analyzing the evidence taken in this case and distinguishing the decision of the New York Supreme Court on different, stipulated facts, appears at pages 36-39 of the Petition (Appendix D).

CONCLUSION

The Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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